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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2021	.	
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The Committee on Rules (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 733.6171, Florida Statutes, is amended
to read:

733.6171 Compensation of attorney for the personal
representative.—

(1) Except as provided in paragraph (2)(d), attorneys for
personal representatives are ~~shall be~~ entitled to reasonable
compensation payable from the estate assets without court order.



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12 (2) (a) The attorney, the personal representative, and
13 persons bearing the impact of the compensation may agree to
14 compensation determined in a different manner than provided in
15 this section. Compensation may also be determined in a different
16 manner than provided in this section if the manner is disclosed
17 to the parties bearing the impact of the compensation and if no
18 objection is made as provided for in the Florida Probate Rules.

19 (b) An attorney representing a personal representative in
20 an estate administration who intends to charge a fee based upon
21 the schedule set forth in subsection (3) shall make the
22 following disclosures in writing to the personal representative:

23 1. There is not a mandatory statutory attorney fee for
24 estate administration.

25 2. The attorney fee is not required to be based on the size
26 of the estate, and the presumed reasonable fee provided in
27 subsection (3) may not be appropriate in all estate
28 administrations.

29 3. The fee is subject to negotiation between the personal
30 representative and the attorney.

31 4. The selection of the attorney is made at the discretion
32 of the personal representative, who is not required to select
33 the attorney who prepared the will.

34 5. The personal representative shall be entitled to a
35 summary of ordinary and extraordinary services rendered for the
36 fees agreed upon at the conclusion of the representation. The
37 summary shall be provided by counsel and shall consist of the
38 total hours devoted to the representation or a detailed summary
39 of the services performed during the representation.

40 (c) The attorney shall obtain the personal representative's



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41 timely signature acknowledging the disclosures.

42 (d) If the attorney does not make the disclosures required
43 by this section, the attorney may not be paid for legal services
44 without prior court approval of the fees or the written consent
45 of all interested parties.

46 (3) Subject to subsection (2), compensation for ordinary
47 services of attorneys in a formal estate administration is
48 presumed to be reasonable if based on the compensable value of
49 the estate, which is the inventory value of the probate estate
50 assets and the income earned by the estate during the
51 administration as provided in the following schedule:

52 (a) One thousand five hundred dollars for estates having a
53 value of \$40,000 or less.

54 (b) An additional \$750 for estates having a value of more
55 than \$40,000 and not exceeding \$70,000.

56 (c) An additional \$750 for estates having a value of more
57 than \$70,000 and not exceeding \$100,000.

58 (d) For estates having a value in excess of \$100,000, at
59 the rate of 3 percent on the next \$900,000.

60 (e) At the rate of 2.5 percent for all above \$1 million and
61 not exceeding \$3 million.

62 (f) At the rate of 2 percent for all above \$3 million and
63 not exceeding \$5 million.

64 (g) At the rate of 1.5 percent for all above \$5 million and
65 not exceeding \$10 million.

66 (h) At the rate of 1 percent for all above \$10 million.

67 (4) Subject to subsection (2), in addition to fees for
68 ordinary services, the attorney for the personal representative
69 shall be allowed further reasonable compensation for any



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70 extraordinary service. What is an extraordinary service may vary
71 depending on many factors, including the size and complexity of
72 the estate. Extraordinary services may include, but are not
73 limited to:

74 (a) Involvement in a will contest, will construction, a
75 proceeding for determination of beneficiaries, a contested
76 claim, elective share proceeding, apportionment of estate taxes,
77 or any adversarial proceeding or litigation by or against the
78 estate.

79 (b) Representation of the personal representative in audit
80 or any proceeding for adjustment, determination, or collection
81 of any taxes.

82 (c) Tax advice on postmortem tax planning, including, but
83 not limited to, disclaimer, renunciation of fiduciary
84 commission, alternate valuation date, allocation of
85 administrative expenses between tax returns, the QTIP or reverse
86 QTIP election, allocation of GST exemption, qualification for
87 Internal Revenue Code ss. 6166 and 303 privileges, deduction of
88 last illness expenses, fiscal year planning, distribution
89 planning, asset basis considerations, handling income or
90 deductions in respect of a decedent, valuation discounts,
91 special use and other valuation, handling employee benefit or
92 retirement proceeds, prompt assessment request, or request for
93 release of personal liability for payment of tax.

94 (d) Review of estate tax return and preparation or review
95 of other tax returns required to be filed by the personal
96 representative.

97 (e) Preparation of the estate's federal estate tax return.
98 If this return is prepared by the attorney, a fee of one-half of



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99 1 percent up to a value of \$10 million and one-fourth of 1
100 percent on the value in excess of \$10 million of the gross
101 estate as finally determined for federal estate tax purposes, is
102 presumed to be reasonable compensation for the attorney for this
103 service. These fees shall include services for routine audit of
104 the return, not beyond the examining agent level, if required.

105 (f) Purchase, sale, lease, or encumbrance of real property
106 by the personal representative or involvement in zoning, land
107 use, environmental, or other similar matters.

108 (g) Legal advice regarding carrying on of the decedent's
109 business or conducting other commercial activity by the personal
110 representative.

111 (h) Legal advice regarding claims for damage to the
112 environment or related procedures.

113 (i) Legal advice regarding homestead status of real
114 property or proceedings involving that status and services
115 related to protected homestead.

116 (j) Involvement in fiduciary, employee, or attorney
117 compensation disputes.

118 (k) Proceedings involving ancillary administration of
119 assets not subject to administration in this state.

120 (5) Upon petition of any interested person, the court may
121 increase or decrease the compensation for ordinary services of
122 the attorney or award compensation for extraordinary services if
123 the facts and circumstances of the particular administration
124 warrant. In determining reasonable compensation, the court shall
125 consider all of the following factors, giving weight to each as
126 it determines to be appropriate:

127 (a) The promptness, efficiency, and skill with which the



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128 administration was handled by the attorney.

129 (b) The responsibilities assumed by and the potential
130 liabilities of the attorney.

131 (c) The nature and value of the assets that are affected by
132 the decedent's death.

133 (d) The benefits or detriments resulting to the estate or
134 interested persons from the attorney's services.

135 (e) The complexity or simplicity of the administration and
136 the novelty of issues presented.

137 (f) The attorney's participation in tax planning for the
138 estate and the estate's beneficiaries and tax return
139 preparation, review, or approval.

140 (g) The nature of the probate, nonprobate, and exempt
141 assets, the expenses of administration, the liabilities of the
142 decedent, and the compensation paid to other professionals and
143 fiduciaries.

144 (h) Any delay in payment of the compensation after the
145 services were furnished.

146 (i) Any agreement relating to the attorney's compensation
147 and whether written disclosures were made to the personal
148 representative in a timely manner under the circumstances
149 pursuant to subsection (2).

150 (j) Any other relevant factors.

151 (6) If a separate written agreement regarding compensation
152 exists between the attorney and the decedent, the attorney shall
153 furnish a copy to the personal representative prior to
154 commencement of employment, and, if employed, shall promptly
155 file and serve a copy on all interested persons. ~~Neither~~ A
156 separate agreement or ~~nor~~ a provision in the will suggesting or



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157 directing that the personal representative retain a specific
158 attorney does not ~~will~~ obligate the personal representative to
159 employ the attorney or obligate the attorney to accept the
160 representation, but if the attorney who is a party to the
161 agreement or who drafted the will is employed, the compensation
162 paid shall not exceed the compensation provided in the agreement
163 or in the will.

164 Section 2. Present paragraph (i) of subsection (6) of
165 section 736.1007, Florida Statutes, is redesignated as paragraph
166 (j), a new paragraph (i) is added to that subsection, and
167 subsections (1), (2), (3), and (5) of that section are amended,
168 to read:

169 736.1007 Trustee's attorney fees.—

170 (1) (a) Except as provided in paragraph (d), if the trustee
171 of a revocable trust retains an attorney to render legal
172 services in connection with the initial administration of the
173 trust, the attorney is entitled to reasonable compensation for
174 those legal services, payable from the assets of the trust,
175 subject to s. 736.0802(10), without court order. The trustee and
176 the attorney may agree to compensation that is determined in a
177 manner or amount other than the manner or amount provided in
178 this section. The agreement is not binding on a person who bears
179 the impact of the compensation unless that person is a party to
180 or otherwise consents to be bound by the agreement. The
181 agreement may provide that the trustee is not individually
182 liable for the attorney fees and costs.

183 (b) An attorney representing a trustee in the initial
184 administration of the trust who intends to charge a fee based
185 upon the schedule set forth in subsection (2) shall make the



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186 following disclosures in writing to the trustee:

187 1. There is not a mandatory statutory attorney fee for
188 trust administration.

189 2. The attorney fee is not required to be based on the size
190 of the trust, and the presumed reasonable fee provided in
191 subsection (2) may not be appropriate in all trust
192 administrations.

193 3. The fee is subject to negotiation between the trustee
194 and the attorney.

195 4. The selection of the attorney is made at the discretion
196 of the trustee, who is not required to select the attorney who
197 prepared the trust.

198 5. The trustee shall be entitled to a summary of ordinary
199 and extraordinary services rendered for the fees agreed upon at
200 the conclusion of the representation. The summary shall be
201 provided by counsel and shall consist of the total hours devoted
202 to the representation or a detailed summary of the services
203 performed during the representation.

204 (c) The attorney shall obtain the trustee's timely
205 signature acknowledging the disclosures.

206 (d) If the attorney does not make the disclosures required
207 by this section, the attorney may not be paid for legal services
208 without prior court approval of the fees or the written consent
209 of the trustee and all qualified beneficiaries.

210 (2) Unless otherwise agreed and subject to subsection (1),
211 compensation based on the value of the trust assets immediately
212 following the settlor's death and the income earned by the trust
213 during initial administration at the rate of 75 percent of the
214 schedule provided in s. 733.6171(3)(a)-(h) is presumed to be



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215 reasonable total compensation for ordinary services of all
216 attorneys employed generally to advise a trustee concerning the
217 trustee's duties in the initial trust administration.

218 (3) Subject to subsection (1), an attorney who is retained
219 to render only limited and specifically defined legal services
220 shall be compensated as provided in the retaining agreement. If
221 the amount or method of determining compensation is not provided
222 in the agreement, the attorney is entitled to a reasonable fee,
223 taking into account the factors set forth in subsection (6).

224 (5) Subject to subsection (1), in addition to the
225 attorney's fees for ordinary services, the attorney for the
226 trustee shall be allowed further reasonable compensation for any
227 extraordinary service. What constitutes an extraordinary service
228 may vary depending on many factors, including the size and
229 complexity of the trust. Extraordinary services may include, but
230 are not limited to:

231 (a) Involvement in a trust contest, trust construction, a
232 proceeding for determination of beneficiaries, a contested
233 claim, elective share proceedings, apportionment of estate
234 taxes, or other adversary proceedings or litigation by or
235 against the trust.

236 (b) Representation of the trustee in an audit or any
237 proceeding for adjustment, determination, or collection of any
238 taxes.

239 (c) Tax advice on postmortem tax planning, including, but
240 not limited to, disclaimer, renunciation of fiduciary
241 commission, alternate valuation date, allocation of
242 administrative expenses between tax returns, the QTIP or reverse
243 QTIP election, allocation of GST exemption, qualification for



244 Internal Revenue Code ss. 303 and 6166 privileges, deduction of
245 last illness expenses, distribution planning, asset basis
246 considerations, throwback rules, handling income or deductions
247 in respect of a decedent, valuation discounts, special use and
248 other valuation, handling employee benefit or retirement
249 proceeds, prompt assessment request, or request for release from
250 personal liability for payment of tax.

251 (d) Review of an estate tax return and preparation or
252 review of other tax returns required to be filed by the trustee.

253 (e) Preparation of decedent's federal estate tax return. If
254 this return is prepared by the attorney, a fee of one-half of 1
255 percent up to a value of \$10 million and one-fourth of 1 percent
256 on the value in excess of \$10 million, of the gross estate as
257 finally determined for federal estate tax purposes, is presumed
258 to be reasonable compensation for the attorney for this service.
259 These fees shall include services for routine audit of the
260 return, not beyond the examining agent level, if required.

261 (f) Purchase, sale, lease, or encumbrance of real property
262 by the trustee or involvement in zoning, land use,
263 environmental, or other similar matters.

264 (g) Legal advice regarding carrying on of decedent's
265 business or conducting other commercial activity by the trustee.

266 (h) Legal advice regarding claims for damage to the
267 environment or related procedures.

268 (i) Legal advice regarding homestead status of trust real
269 property or proceedings involving the status.

270 (j) Involvement in fiduciary, employee, or attorney
271 compensation disputes.

272 (k) Considerations of special valuation of trust assets,



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273 including discounts for blockage, minority interests, lack of
274 marketability, and environmental liability.

275 (6) Upon petition of any interested person in a proceeding
276 to review the compensation paid or to be paid to the attorney
277 for the trustee, the court may increase or decrease the
278 compensation for ordinary services of the attorney for the
279 trustee or award compensation for extraordinary services if the
280 facts and circumstances of the particular administration
281 warrant. In determining reasonable compensation, the court shall
282 consider all of the following factors giving such weight to each
283 as the court may determine to be appropriate:

284 (i) Any agreement relating to the attorney's compensation
285 and whether written disclosures were made to the trustee in a
286 timely manner under the circumstances pursuant to paragraph
287 (1) (b).

288 Section 3. This act applies to initial estate and initial
289 trust administrations commenced on or after October 1, 2021.

290 Section 4. This act shall take effect October 1, 2021.

291
292 ===== T I T L E A M E N D M E N T =====

293 And the title is amended as follows:

294 Delete everything before the enacting clause
295 and insert:

296 A bill to be entitled
297 An act relating to attorney compensation; amending s.
298 733.6171, F.S.; requiring an attorney representing a
299 personal representative in an estate administration
300 who intends to charge a certain fee to make specified
301 written disclosures; requiring the attorney to obtain



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302 a certain signature; prohibiting an attorney who does
303 not make such disclosures from being paid for legal
304 services except in certain circumstances; providing
305 that the complexity of an estate may be considered
306 when determining what is an extraordinary service;
307 requiring a court to consider certain agreements and
308 written disclosures when determining reasonable
309 compensation of an attorney upon petition of an
310 interested person; amending s. 736.1007, F.S.;
311 requiring an attorney representing a trustee in the
312 initial administration of a trust who intends to
313 charge a certain fee to make specified written
314 disclosures; requiring the attorney to obtain a
315 certain signature; prohibiting an attorney who does
316 not make such disclosures from being paid for legal
317 services except in certain circumstances; providing
318 that the complexity of a trust may be considered when
319 determining what is an extraordinary service;
320 requiring a court to consider certain agreements and
321 written disclosures when determining reasonable
322 compensation of an attorney upon petition of an
323 interested person; providing applicability; providing
324 an effective date.